IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 187 of 2007
In
COMPANY PETITION No. 205 of 1996

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SENDHAJI MOHANJI THAKORE - Applicant(s)
Versus
THE O.L. OF GUJARAT STATE TEXTILE CORPORATION LTD. - Respondent(s)

==========

Appearance :
MR HARDIK C RAWAL for Applicant(s) : 1,MRS MH RAWAL for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/04/2007

ORAL JUDGMENT

1. Present Judge's Summons has been taken out by the applicant claiming to be in possession of two rooms situated at Sarpanch ni Chali, Behind

Gokulnagar, Vastrapur, Ahmedabad which is situated in Survey No. 273/1 of the ownership of the company in liquidation for an appropriate order to grant him permission under Section 446 of the Companies Act; 1956 to continue with Civil Suit No. 19 of 2007 filed by him before the learned City Civil Court, Ahmedabad.

2. Shri Hardik Rawal, learned advocate appearing for the applicant has submitted that the applicant is residing since 1985 in two rooms situated at Sarpanch ni Chali, Behind Gokulnagar, Vastrapur, Ahmedabad and the aforesaid small house is situated in Survey No. 273/1, which is held by the Sarangpur Cotton Manufacturing Company Limited (now in liquidation). It is submitted that all throughout the applicant is in possession of the said property and was not aware about the winding up proceedings of the GSTC Limited, however, some of the officers from the office of the Official Liquidator came and orally directed the applicant to vacate the premises and

therefore, he was constrained to file Civil Suit No. 19 of 2007 along with application for interim injunction and the learned City Civil Court has been pleased to pass interim order dated 2.1.2007 below notice of motion. It is submitted that the applicant is residing with his wife and two unmarried daughters and married son and he is claiming title of the property on the basis of adverse possession and therefore, it is requested to grant permission to the applicant permitting him to continue with Civil Suit No. 19 of 2007. At the time of hearing of the present application when it was pointed out to the learned counsel appearing on behalf of the applicant that how he is claiming ownership over the property and the land in question by adverse possession, Shri Rawal, learned advocate appearing for the applicant has submitted that he is restricting his claim over the aforesaid two rooms only and he is not claiming any ownership over the entire land on the basis of the adverse possession. Now, considering the averments in the plaint, it is the case on

behalf of the applicant that the applicant was given the said land and/or to occupy the said land / property to protect the properties of the company in liquidation and for which no rent was recovered and even the applicant was also not paid any amount. Thus, it is the specific case on behalf of the applicant that he was permitted to occupy the said property for the purpose of protection of the company in liquidation, meaning thereby, as a Chokidar. It is not in dispute that Sarangpur Cotton Mills Limited was taken over by the Gujarat State Textile Corporation Limited and the GSTC Limited has been ordered to be wound up by this Court by judgment and order dated 6.2.1997 passed in Company Petition No. 205 of 1996. Considering the fact that the company has gone into liquidation, the applicant has no right to occupy and/or continue to occupy the rooms occupied by him. It is the specific case on behalf of the applicant in the Suit that he was permitted to occupy the aforesaid property / premises to protect the property of the company

in liquidation i.e. as a Chokidar. Considering the provisions of Section 445(3) of the Act as soon as the company goes into liquidation, the relationship of employer and employee comes to an end. Even considering the provisions of Section 630 of the Companies Act; 1956, the occupation of the applicant after the order of winding up is illegal and it constitutes offence.

3. In case of Textile Labour Association V/s. O.L. of Amruta Mills Ltd in Company Application No. 249 of 2001 by order dated 30th September, 2004 in paragraph Nos.34, 35, 36 and 38 it has been observed as under :-

> ***"34. After having heard learned advocates appearing for the respective parties and after having considered the relevant statutory provisions of the Companies Act, 1956 as well as after considering the decided case law on the subject, the Court is of the view that the occupants of the Chawls shall not have any right to occupy their respective Chawls once the company goes***

into liquidation. Since their occupation was based on the employer employee relationship and as soon as the Company goes into liquidation, as per the Provisions contained in Section 445 (3) of the Companies Act, 1956, that relationship has come to an end. Section 468 of the Companies Act, 1956 provides a summary procedure for enabling the liquidator to avoid expensive litigation in discharge of one of his primary duties, namely, collection of the assets of the Company. When the company is prima facie entitled to any property, there is no reason why the Court should not in its discretion make an order under Section 468, even though the exact extent of the property has to be determined. The Court is also of the view that object of Section 477 is to enable the Court in winding up to have a discovery with a view to find out the financial condition and assets and determine what further steps may be taken to release the assets. While exercising its powers under Section 477, the Court can certainly pass an order of eviction as no tenancy rights whatsoever were created by the Company in liquidation in favour of the occupants. By virtue of employment,

only right to occupy was granted to the occupants and once an employment comes to an end, the employee has to evict the premises and cannot claim any tenancy.

35.The submissions made by learned advocates Mr. A.S.Vakil and Mr. Sanjanwala to the effect that the notice of eviction was issued by the liquidator pursuant to the order dated 16.12.2002 passed by this Court was violative of the principles of natural justice and the applicants were not heard in the matter were also not acceptable as pursuant to the said notice, they have filed present applications before this Court and the Court has granted stay against eviction and after hearing the parties at length on the subject, the Court has now come to the conclusion that the occupants have no right whatsoever to withhold the possession of the respective Chawls. There is no substance in the submission of the learned advocates appearing for the occupants to the effect that this would be post-decision hearing which is violative of the principles of natural justice. The Court has not straightaway passed the

order of eviction. But the Official Liquidator was directed to issue only notice for eviction. The notice pre-supposes the hearing in the matter and the occupants were in fact heard in the matter and till the final decision is taken in the matter, their possession has been protected by the Court. The Court is, therefore, of the view that there is no violation of the principles of natural justice as alleged by the occupants.

36.Looking to the provisions contained in Section 445 (3), 446, 468, 477 and 630 of the Companies Act, 1956, the Court is of the view that the Court has ample power to issue directions for eviction of the occupants from the Chawls belonging to the company as retention of all these Chawls by them is amounting to illegally or unlawfully withholding the properties of the company in liquidation and the duty is cast upon them to hand over the vacant and peaceful possession to the Official Liquidator. Over and above this, Section 630 specifically states that it would amount to a criminal offence for which they are liable to be criminally prosecuted. Even for getting eviction, the Liquidator has not to file any suit for eviction or

initiate any other proceedings. On an application filed by the liquidator or by any creditor or by the contributory of the Company, the Court can pass such order of eviction. In the present case, the Textile Labour Association representing workers being Creditors having pari passu charge over the assets of the Company have filed Company Application No.249 of 2001 wherein this Court has issued notice for eviction and while exercising the powers under Section 446 of the Companies Act, 1956, the Court has every power to issue suitable direction looking to the facts involved in the matter. Even while court exercises its power under Section 446 of the Act, the pendency of proceedings before other forums such as Civil Courts would not prevent this Court from passing the order with regard to eviction."

38. This Court is in complete agreement with the above guiding principles and holds that the possession of the occupants of the Chawls is an illegal possession and no protection can be granted to them for retaining such illegal possession. This Court has an ample power to issue direction to evict

the occupants from such Chawls while exercising its original jurisdiction in an application moved either by the Official Liquidator or by any Creditor or contributory of the Company in liquidation and for that purpose, the Company in liquidation through its liquidator, has neither to file any suit nor criminal complaint. The Court, therefore, does not see any infirmity in issuance of direction to the Official Liquidator to take possession of the Chawls from the occupants forthwith and for that purpose, he is also permitted to take police assistance in the matter.

4. Now, considering the provisions of Section 445(3) r.w. Section 630 of the Companies Act; 1956 and the fact that the applicant was permitted to occupy the premises as a Chokidar to protect the property of the company in liquidation and after the order of winding up of the company, the applicant has no right to occupy and/or continue to occupy the aforesaid premises and that the possession and occupation of the premises of the applicant is illegal and considering dishonest attempt on the part of the

applicant to claim the ownership on adverse possession, the applicant cannot be permitted to continue with the aforesaid Civil Suit. Before filing the aforesaid Suit permission is required to be obtained under Section 446 of the Act which is not obtained though in an appropriate case the permission can be obtained subsequently, however, considering the facts and circumstances of the case and dishonesty on the part of the applicant to grab the premises of the property in liquidation under the guise of adverse possession though it is his specific case that he was permitted to occupy the premises / property as a Chokidar to protect the properties of the company in liquidation, the applicant is not entitled to any relief and no permission to the applicant to continue with the aforesaid Suit can be granted. It is required to be noted that the company is ordered to be wound up in the year 1997 and by selling the properties of the company in liquidation the amount is to be realized and is required to be disbursed among the workers and other secured

creditors. Under the circumstances, prayer of the applicant is hereby rejected. Official Liquidator to take steps to recover the possession of the premises occupied by the applicant immediately. No costs.

[M.R.Shah, J.]

kdc